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AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 2, 2003

AMENDED IN SENATE JANUARY 9, 2003

SENATE BILL

No. 27

Introduced by Senator Figueroa

(Coauthors: Senators Alpert, Kuehl, Romero, and Soto)

(Coauthors: Assembly Members *Calderon, Correa, Hancock, Lieber, Longville, Lowenthal, and Pavley*) *Lowenthal, Montanez, Pavley, Vargas, and Wiggins*)

December 2, 2002

An act to amend Section 1798.84 of, and to repeal and add Section 1798.83 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 27, as amended, Figueroa. Personal information: disclosure to direct marketers.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records by destroying, or arranging for the destruction of, the records, as specified. Any customer injured by a business' violation of these provisions is entitled to recover damages, obtain injunctive relief, or seek other remedies.

This bill would, *operative January 1, 2005, and* subject to specified exceptions, require a business that discloses a customer's personal

information, including information relating to income or purchases, to a third party for direct marketing purposes to provide the customer, within 30 days after the customer's ~~written request, a description as specified,~~ in writing or by e-mail ~~the names and addresses of the sources and recipients of that information and specified details regarding the information disclosed, except as specified.~~ The bill would also ~~prohibit a business from conditioning the sale of goods or services on the customer's consent to that disclosure.~~ *In require businesses required to comply with the bill to provide information to customers regarding its privacy policy and the designated means of making an inquiry regarding that policy.*

In addition to the legal remedies provided under current law, a customer would be entitled to recover a civil penalty, up to \$3,000, and attorney's fees and costs for a violation of these provisions as they read both before and after January 1, 2005.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — For free market forces to have a role in shaping~~
- 2 *SECTION 1. (a) For free market forces to have a role in*
- 3 *shaping the privacy practices of California businesses and for*
- 4 *“opt-in” and “opt-out” remedies to be effective, Californians*
- 5 *must be more than vaguely informed that a business might share*
- 6 *personal information with third parties. Consumers must, for these*
- 7 *reasons and pursuant to Section 1 of Article 1 of the California*
- 8 *Constitution, be better informed about what kinds of personal*
- 9 *information are purchased by businesses for direct marketing*
- 10 *purposes. With these specifics, consumers can knowledgeably*
- 11 *choose to opt-in or opt-out or choose among businesses that*
- 12 *disclose information to third parties for direct marketing purposes*
- 13 *on the basis of how protective the business is of consumers’*
- 14 *privacy.*
- 15 *(b) Nothing in this act is intended to impose, and this act may*
- 16 *not be construed to impose, any prohibition or requirement upon,*
- 17 *restraint of, or prerequisite to, a business disclosing or exchanging*
- 18 *personal information to third parties, including affiliated parties,*
- 19 *for any lawful purpose, including direct marketing purposes. This*
- 20 *act, generally, and Section 1798.83 of the Civil Code, specifically,*

1 *provides merely for descriptions of general business practices*
2 *regarding direct marketing to be disclosed to customers after those*
3 *practices have occurred and, for example, does not require that*
4 *personal information associated with specific individuals be*
5 *disclosed.*

6 SEC. 2. *Section 1798.83 of the Civil Code is repealed.*

7 ~~1798.83.—Any waiver of the provisions of this title is contrary~~
8 ~~to public policy, and is void and unenforceable.~~

9 SEC. 3. *Section 1798.83 is added to the Civil Code, to read:*

10 1798.83. (a) *Except as otherwise provided in subdivision (d),*
11 *if a business has an established business relationship with a*
12 *customer and has within the immediately preceding calendar year*
13 *disclosed personal information that corresponds to any of the*
14 *categories of personal information set forth in paragraph (6) of*
15 *subdivision (e) to third parties, and if the business knows or*
16 *reasonably should know that the third parties used the personal*
17 *information for the third parties' direct marketing purposes, that*
18 *business shall, after the receipt of a written or electronic mail*
19 *request, or, if the business chooses to receive requests by toll-free*
20 *telephone or facsimile numbers, a telephone or facsimile request*
21 *from the customer, provide all of the following information to the*
22 *customer free of charge:*

23 (1) *In writing or by electronic mail, a list of the categories set*
24 *forth in paragraph (6) of subdivision (e) that correspond to the*
25 *personal information disclosed by the business to third parties for*
26 *the third parties' direct marketing purposes during the*
27 *immediately preceding calendar year.*

28 (2) *In writing or by electronic mail, the names and addresses*
29 *of all of the third parties that received personal information from*
30 *the business for the third parties' direct marketing purposes during*
31 *the preceding calendar year and, if the nature of the third parties'*
32 *business cannot reasonably be determined from the third parties'*
33 *name, examples of the products or services marketed, if known to*
34 *the business, sufficient to give the customer a reasonable*
35 *indication of the nature of the third parties' business.*

36 (b) (1) *A business required to comply with this section shall*
37 *designate a mailing address, electronic mail address, or, if the*
38 *business chooses to receive requests by telephone or facsimile, a*
39 *toll-free telephone or facsimile number, to which customers may*
40 *deliver requests pursuant to subdivision (a). A business required*

1 to comply with this section shall, at its election, do at least one of
2 the following:

3 (A) Notify all agents and managers who directly supervise
4 employees who regularly have contact with customers of the
5 designated addresses or numbers or the means to obtain those
6 addresses or numbers and instruct those employees that customers
7 who inquire about the business' privacy practices or the
8 businesses' compliance with this section, shall be informed of the
9 designated addresses or numbers or the means to obtain the
10 addresses or numbers by any customer who inquires.

11 (B) Add to the home page of its Web site, a link either to a page
12 titled "Your Privacy Rights" or to add the words "Your Privacy
13 Rights," to the home page's link to the business' privacy policy. If
14 the business elects to add the words "Your Privacy Rights" to the
15 link to the business' privacy policy, the words "Your Privacy
16 Rights" shall be in the same style and size of the link to the
17 business' privacy policy. If the business does not display a link to
18 its privacy policy on the home page of its Web site, or does not have
19 a privacy policy, the words "Your Privacy Rights" shall be written
20 in larger type than the surrounding text, or in contrasting type,
21 font, or color to the surrounding text of the same size, or set off from
22 the surrounding text of the same size by symbols or other marks
23 that call attention to the language. The first page of the link shall
24 describe a customer's rights pursuant to this section and shall
25 provide the designated mailing address, e-mail address, as
26 required, or toll-free telephone number or facsimile number, as
27 appropriate. If the business elects to add the words "Your
28 California Privacy Rights" to the home page's link to the
29 business's privacy policy in a manner that complies with this
30 subdivision, and the first page of the link describes a customer's
31 rights pursuant to this section, and provides the designated
32 mailing address, electronic mailing address, as required, or
33 toll-free telephone or facsimile number, as appropriate, the
34 business need not respond to requests that are not received at one
35 of the designated addresses or numbers.

36 (C) Make the designated addresses or numbers, or means to
37 obtain the designated addresses or numbers, readily available
38 upon request of a customer at every place of business in California
39 where the business or its agents regularly have contact with
40 customers.



The response to a request pursuant to this section received at one of the designated addresses or numbers shall be provided within 30 days. Requests received by the business at other than one of the designated addresses or numbers shall be provided within a reasonable period, in light of the circumstances related to how the request was received, but not to exceed 150 days from the date received.

(2) A business that is required to comply with this section and Section 6803 of Title 15 of the United States Code may comply with this section by providing the customer the disclosure required by Section 6803 of Title 15 of the United States Code, but only if the disclosure also complies with this section.

(c) (1) A business required to comply with this section is not obligated to do so in response to a request from a customer more than once during the course of any calendar year. A business with fewer than a total of 20 full-time or part-time employees is exempt from the requirements of this section.

(2) If the business required to comply with this section adopts and discloses to the public, in its privacy policy, a policy of not disclosing personal information of customers to third parties for the third parties' direct marketing purposes unless the customer first affirmatively agrees to that disclosure, or of not disclosing the personal information of customers to third parties for the third parties' direct marketing purposes if the customer has exercised an option that prevents that information from being disclosed to third parties for those purposes, and the customer either has not affirmatively agreed or has exercised his or her option to prevent those disclosures, as long as the business maintains and discloses the policies, the business may comply with subdivision (a) by notifying the customer that the business is not permitted to disclose that information to third parties because those disclosures have been prohibited by the customer or are forbidden by the company's privacy policy.

(d) The following are among the disclosures not deemed to be disclosures of personal information by a business for a third parties' direct marketing purposes for purposes of this section:

(1) Disclosures between a business and a third party pursuant to contracts or arrangements pertaining to any of the following:

(A) The processing, storage, management, or organization of personal information, or the performance of services on behalf of

1 *the business during which personal information is disclosed, if the*
2 *third party that processes, stores, manages, or organizes the*
3 *personal information does not use the information for a third*
4 *party's direct marketing purposes and does not disclose the*
5 *information to additional third parties for their direct marketing*
6 *purposes.*

7 *(B) Marketing products or services to customers with whom the*
8 *business has an established business relationship where, as a part*
9 *of the marketing, the business does not disclose personal*
10 *information to third parties for the third parties' direct marketing*
11 *purposes.*

12 *(C) Maintaining or servicing accounts, including credit*
13 *accounts and disclosures pertaining to the denial of applications*
14 *for credit or the status of applications for credit.*

15 *(2) Disclosures to a consumer reporting agency of a customer's*
16 *payment history or other information pertaining to transactions or*
17 *experiences between the business and a customer if that*
18 *information is to be reported in, or used to generate, a consumer*
19 *report as defined in subdivision (d) of Section 1681a of Title 15 of*
20 *the United States Code, and use of that information is limited by*
21 *the federal Fair Credit Reporting Act.*

22 *(3) Disclosures of personal information by a business to a third*
23 *party financial institution solely for the purpose of the business*
24 *obtaining payment for a transaction in which the customer paid the*
25 *business for goods or services with a check, credit card, charge*
26 *card, or debit card, if the customer seeks the information required*
27 *by subdivision (a) from the business obtaining payment, whether*
28 *or not the business obtaining payment knows or reasonably should*
29 *know that the third party financial institution has used the personal*
30 *information for its direct marketing purposes.*

31 *(4) Disclosures of personal information between a licensed*
32 *agent and its principal, if the personal information disclosed is*
33 *necessary to complete, effectuate, administer, or enforce*
34 *transactions between the principal and the agent, whether or not*
35 *the licensed agent or principal also uses the personal information*
36 *for direct marketing purposes, if that personal information is used*
37 *by each of them solely to market products and services directly to*
38 *customers with whom both have established business relationships*
39 *as a result of the principal and agent relationship.*



(5) *Disclosures of personal information between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or co-branded card program with the financial institution, if the personal information disclosed is necessary for the financial institution to maintain or service accounts on behalf of the business with which it has a private label credit card, affinity card, retail installment contract, or branded card program, or to complete, effectuate, administer, or enforce customer transactions or transactions between the institution and the business, whether or not the institution or the business also uses the personal information for direct marketing purposes, if that personal information is used solely to market products and services directly to customers with whom both the business and the financial institution have established business relationships as a result of the private label credit card, affinity card, retail installment contract, or co-branded card program.*

(e) For purposes of this section:

(1) *“Customer” means an individual who is a resident of California who provides personal information to a business during the creation of, or throughout the duration of, an established business relationship if the business relationship is primarily for personal, family, or household purposes.*

(2) *“Direct marketing purposes” means the use of personal information to solicit or induce a purchase, rental, lease, or exchange of products, goods, property, or services directly to individuals by means of the mail, telephone, or electronic mail for their personal, family, or household purposes. The sale, rental, exchange, or lease of personal information for consideration to businesses is a direct marketing purpose of the business that sells, rents, exchanges or obtains consideration for the personal information. “Direct marketing purposes” does not include the use of personal information (A) by bona fide tax exempt charitable or religious organizations to solicit charitable contributions, (B) to raise funds from and communicate with individuals regarding politics and government, (C) by a third party when the third party receives personal information solely as a consequence of having obtained for consideration permanent ownership of accounts that might contain personal information, or (D) by a third party when the third party receives personal information solely as a consequence of a single transaction where, as a part of the*

1 transaction, personal information had to be disclosed in order to
2 effectuate the transaction.

3 (3) “Disclose” means to disclose, release, transfer,
4 disseminate, or otherwise communicate orally, in writing, or by
5 electronic or any other means to any third party.

6 (4) “Employees who regularly have contact with customers”
7 means employees whose contact with customers is not incidental
8 to their primary employment duties, and whose duties do not
9 predominantly involve ensuring the safety or health of the
10 businesses customers. It includes, but is not limited to, employees
11 whose primary employment duties are as cashier, clerk, customer
12 service, sales, or promotion. It does not, by way of example,
13 include employees whose primary employment duties consist of
14 food or beverage preparation or service, maintenance and repair
15 of the business’ facilities or equipment, direct involvement in the
16 operation of a motor vehicle, aircraft, watercraft, amusement ride,
17 heavy machinery or similar equipment, security, or participation
18 in a theatrical, literary, musical, artistic, or athletic performance
19 or contest.

20 (5) “Established business relationship” means a relationship
21 formed by a voluntary, two-way communication between a
22 business and a customer, with or without an exchange of
23 consideration, for the purpose of purchasing, renting, or leasing
24 real or personal property, or any interest therein, or obtaining a
25 product or service from the business, if the relationship is ongoing
26 and has not been expressly terminated by the business or the
27 customer, or if the relationship is not ongoing, but is solely
28 established by the purchase, rental, or lease of real or personal
29 property from a business, or the purchase of a product or service,
30 no more than 18 months have elapsed from the date of the
31 purchase, rental, or lease.

32 (6) (A) The categories of personal information required to be
33 disclosed pursuant paragraph (1) of subdivision (a) are all of the
34 following:

35 (i) Name and address.

36 (ii) Electronic mail address.

37 (iii) Age or date of birth.

38 (iv) Names of children.

39 (v) Electronic mail or other addresses of children.

40 (vi) Number of children.

- 1 (vii) *The age or gender of children.*
2 (viii) *Height.*
3 (ix) *Weight.*
4 (x) *Race.*
5 (xi) *Religion.*
6 (xii) *Occupation.*
7 (xiii) *Telephone number.*
8 (xiv) *Education.*
9 (xv) *Political party affiliation.*
10 (xvi) *Medical condition.*
11 (xvii) *Drugs, therapies, or medical products or equipment*
12 *used.*
13 (xviii) *The kind of product the customer purchased, leased, or*
14 *rented.*
15 (xix) *Real property purchased, leased, or rented.*
16 (xx) *The kind of service provided.*
17 (xxi) *Social security number.*
18 (xxii) *Bank account number.*
19 (xxiii) *Credit card number.*
20 (xxiv) *Debit card number.*
21 (xxv) *Bank or investment account, debit card, or credit card*
22 *balance.*
23 (xxvi) *Payment history.*
24 (xxvii) *Information pertaining to the customer's*
25 *creditworthiness, assets, income, or liabilities.*
26 (B) *If a list, description, or grouping of customer names or*
27 *addresses is derived using any of these categories, and is disclosed*
28 *to a third party for direct marketing purposes in a manner that*
29 *permits the third party to identify, determine, or extrapolate any*
30 *other personal information from which the list was derived, and*
31 *that personal information when it was disclosed identified,*
32 *described, or was associated with an individual, the categories set*
33 *forth in this subdivision that correspond to the personal*
34 *information used to derive the list, description, or grouping shall*
35 *be considered personal information for purposes of this section.*
36 (7) *"Personal information" as used in this section means any*
37 *information that when it was disclosed identified, described, or*
38 *was able to be associated with an individual and includes all of the*
39 *following:*
40 (A) *An individual's name and address.*

- 1 (B) *Electronic mail address.*
- 2 (C) *Age or date of birth.*
- 3 (D) *Names of children.*
- 4 (E) *Electronic mail or other addresses of children.*
- 5 (F) *Number of children.*
- 6 (G) *The age or gender of children.*
- 7 (H) *Height.*
- 8 (I) *Weight.*
- 9 (J) *Race.*
- 10 (K) *Religion.*
- 11 (L) *Occupation.*
- 12 (M) *Telephone number.*
- 13 (N) *Education.*
- 14 (O) *Political party affiliation.*
- 15 (P) *Medical condition.*
- 16 (Q) *Drugs, therapies, or medical products or equipment used.*
- 17 (R) *The kind of product the customer purchased, leased, or*
- 18 *rented.*
- 19 (S) *Real property purchased, leased, or rented.*
- 20 (T) *The kind of service provided.*
- 21 (U) *Social security number.*
- 22 (V) *Bank account number.*
- 23 (W) *Credit card number.*
- 24 (X) *Debit card number.*
- 25 (Y) *Bank or investment account, debit card, or credit card*
- 26 *balance.*
- 27 (Z) *Payment history.*
- 28 (AA) *Information pertaining to creditworthiness, assets,*
- 29 *income, or liabilities.*
- 30 (8) *“Third party” or “third parties” means one or more of the*
- 31 *following:*
- 32 (A) *A business that is a separate legal entity from the business*
- 33 *that has an established business relationship with a customer.*
- 34 (B) *A business that has access to a database that is shared*
- 35 *among businesses, if the business is authorized to use the database*
- 36 *for direct marketing purposes, unless the use of the database is*
- 37 *exempt from being considered a disclosure for direct marketing*
- 38 *purposes pursuant to subdivision (d).*



1 (C) A business not affiliated by a common ownership or
2 common corporate control with the business required to comply
3 with subdivision (a).

4 (f) (1) Disclosures of personal information for direct
5 marketing purposes between affiliated third parties that share the
6 same brand name are exempt from the requirements of paragraph
7 (1) of subdivision (a) unless the personal information disclosed
8 corresponds to one of the following categories, in which case the
9 customer shall be informed of those categories listed in this
10 subdivision that correspond to the categories of personal
11 information disclosed for direct marketing purposes and the third
12 party recipients of personal information disclosed for direct
13 marketing purposes pursuant to paragraph (2) of subdivision (a):

14 (A) Number of children.

15 (B) The age or gender of children.

16 (C) Electronic mail or other addresses of children.

17 (D) Height.

18 (E) Weight.

19 (F) Race.

20 (G) Religion.

21 (H) Telephone number.

22 (I) Medical condition.

23 (J) Drugs, therapies, or medical products or equipment used.

24 (K) Social security number.

25 (L) Bank account number.

26 (M) Credit card number.

27 (N) Debit card number.

28 (O) Bank or investment account, debit card, or credit card
29 balance.

30 (2) If a list, description, or grouping of customer names or
31 addresses is derived using any of these categories, and is disclosed
32 to a third party or third parties sharing the same brand name for
33 direct marketing purposes in a manner that permits the third party
34 to identify, determine, or extrapolate the personal information
35 from which the list was derived, and that personal information
36 when it was disclosed identified, described, or was associated with
37 an individual, any other personal information that corresponds to
38 the categories set forth in this subdivision used to derive the list,
39 description, or grouping shall be considered personal information
40 for purposes of this section.

1 (3) If a business discloses personal information for direct
2 marketing purposes to affiliated third parties that share the same
3 brand name, the business that discloses personal information for
4 direct marketing purposes between affiliated third parties that
5 share the same brand name may comply with the requirements of
6 paragraph (2) of subdivision (a) by providing the overall number
7 of affiliated companies that share the same brand name.

8 (g) The provisions of this section are severable. If any provision
9 of this section or its application is held invalid, that invalidity shall
10 not affect other provisions or applications that can be given effect
11 without the invalid provision or application.

12 (h) This section shall become operative on January 1, 2005.

13 SEC. 4. Section 1798.84 of the Civil Code is amended to read:

14 1798.84. (a) Any waiver of a provision of this title is contrary
15 to public policy and is void and unenforceable.

16 (b) Any customer injured by a violation of this title may
17 institute a civil action to recover damages.

18 ~~(b)~~

19 (c) In addition, for a willful, intentional, or reckless violation
20 of Section 1798.83, a customer may recover a civil penalty not to
21 exceed three thousand dollars (\$3,000) per violation; otherwise,
22 the customer may recover a civil penalty of up to five hundred
23 dollars (\$500) per violation for a violation of Section 1798.83.

24 (d) Unless the violation is willful, intentional, or reckless, a
25 business that is alleged to have not provided all the information
26 required by subdivision (a) of Section 1798.83, to have provided
27 inaccurate information, failed to provide any of the information
28 required by subdivision (a) of Section 1798.83, or failed to provide
29 information in the time period required by subdivision (b) of
30 Section 1798.83, may assert as a complete defense that it thereafter
31 provided regarding the information that was alleged to be
32 untimely, all the information, or accurate information, to all
33 customers who were provided incomplete or inaccurate
34 information, respectively, within 90 days of the date the business
35 knew that it had failed to provide the information, timely
36 information, all the information, or the accurate information,
37 respectively.

38 (e) Any business that violates, proposes to violate or has
39 violated this title may be enjoined.

40 ~~(e)~~

1 (f) A prevailing plaintiff in any action commenced under
2 Section 1798.83 shall also be entitled to recover his or her
3 reasonable attorney's fees and costs.

4 (g) The rights and remedies available under this section are
5 cumulative to each other and to any other rights and remedies
6 available under law.

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10 **All matter omitted in this version of the**
11 **bill appears in the bill as amended in the**
12 **Assembly, July 2, 2003 (JR 11)**
13

